

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THOMAS ALLEN GORDON,

Plaintiff,

v.

JOE BARNETT, *et al*,

Defendants.

Case No. C03-5524KLS

ORDER DIRECTING SERVICE
BY UNITED STATES
MARSHAL AND PROCEDURES

This matter is before the Court on plaintiff's filing of a motion to dismiss defendant Robert Hanks (Dkt. #133), a motion to dismiss defendant Drew Smetana (Dkt. #134), a motion to dismiss defendant Gloria Edwards (Dkt. #135), and a motion for leave to file an amended complaint (Dkt. #137). All four of the above motions were re-noted for consideration on April 6, 2007, after the Court granted plaintiff's motion to lift the previous stay imposed in this matter. (Dkt. #138).

When the Court granted plaintiff's request to lift the stay, defendants were given the opportunity to respond to each of the above motions. To date, however, defendants have filed no objection, and indeed, no responses thereto. As such, the Court sees no reason not to grant plaintiff's motions to dismiss Mr. Hanks, Mr. Smetana and Ms. Edwards as defendants from this case. Accordingly, each of those motions (Dkt. #133-#135) hereby are GRANTED.

Similarly, while plaintiff already has filed one an amended complaint in this matter, for the most part, the changes he now seeks to make to that amended complaint essentially consists of deleting the above three named defendants from the complaint. Thus, as objections have made no objections to this

1 request as well, plaintiff's motion for leave to file a second amended complaint (Dkt. #137) also hereby is
2 GRANTED.

3 The Clerk is directed to effect service of plaintiff's second amended complaint as provided below:

4 (1) Service by United States Marshal.

5 It is hereby ORDERED that the United States Marshal shall send the following to each named
6 defendant by first class mail: a copy of the complaint (Dkt. #137-2) and of this Order, two copies of the
7 Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of service of Summons, and a
8 return envelope, postage prepaid, addressed to the Clerk's Office. All costs of service shall be advanced by
9 the United States. The Clerk shall assemble the necessary documents to effect service.

10 (2) Response Required

11 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of Service of
12 Summons. Each defendant who timely returns the signed Waiver shall have **sixty (60) days** after the date
13 designated on the Notice of Lawsuit to file and serve an answer or a motion directed to the complaint, as
14 permitted by Rule 12 of the Federal Rules of Civil Procedure.

15 Any defendant who fails to timely return the signed Waiver will be personally served with a
16 summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule
17 4(d)(2). A defendant who has been personally served shall file an answer or motion permitted under Rule
18 12 within **thirty (30) days** after service.

19 (3) Filing and Service by Parties, Generally.

20 All original documents and papers submitted for consideration by the Court in this case, and a
21 duplicate of all such papers, are to be filed with the Clerk of this Court. The originals and copies of all
22 such papers shall indicate in the upper right-hand corner the name of the Magistrate Judge to whom the
23 copies are to be delivered. The papers shall be accompanied by proof that such documents have been
24 served upon counsel for the opposing party (or upon any party acting *pro se*). The proof shall show the
25 day and manner of service and may be written acknowledgment of service, by certificate of a member of
26 the bar of this Court, or by affidavit of the person who served the papers.

27 (4) Motions.

28 Any request for Court action shall be set forth in a motion, properly filed and served, pursuant to

1 the requirements of Local Rule CR 7. If a party fails to file and serve timely opposition to a motion, the
2 Court may deem any opposition to be without merit.

3 (5) Motions for Summary Judgment

4 If one of the parties files a motion for summary judgment pursuant to Federal Rules of Civil
5 Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56 requires a nonmoving
6 party to submit affidavits or other evidence in opposition to a motion for summary judgment if the moving
7 party has shown the absence of issues of material fact and an entitlement to judgment as a matter of law. A
8 nonmoving party may not rest upon the mere allegations or denials of prior pleadings. Rather, successful
9 opposition to a motion for summary judgment requires the nonmoving party to set forth, through affidavits
10 or other evidence, specific facts showing a genuine issue for trial. Failure by the nonmoving party to
11 oppose a summary judgment motion or to present counter evidence could result in the Court accepting the
12 moving party's evidence as the truth, and entering final judgment in favor of the moving party without a
13 full trial. Rand v. Rowland, 113 F.3d 1520 (9th Cir. 1997).

14 (6) Direct Communications with District Judge or Magistrate Judge

15 No direct communication is to take place with the District Judge or Magistrate Judge with regard
16 to this case. All relevant information and papers are to be directed to the Clerk.

17 (7) Clerk's Action

18 The Clerk is directed to send a copy of this Order and of the General Order issued by the
19 Magistrate Judges to plaintiff and to defendants and defendants' counsel, if any.

20 DATED this 13th day of April, 2007.

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24 Karen L. Strombom
25 United States Magistrate Judge
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